

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
DAYTON DIVISION**

Kevin J. Stenger,

Plaintiff,

v.

Wagner Industrial Electric, Inc. ,

Defendant.

Civil Action No. 3:09-cv-77

COMPLAINT

Plaintiff, Kevin J. Stenger (“Stenger”), by the undersigned attorneys, makes the following averments:

1. This is a civil action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4333 (“USERRA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) and 28 U.S.C. § 1391(b). Defendant, Wagner Industrial Electric, Inc. (“Wagner”), is a business that maintains a place of business in this judicial district. Additionally, a substantial part of the events giving rise to the claim occurred in this district.

PARTIES

4. Stenger resides in Sunman, Indiana.

5. Wagner is an Ohio corporation, headquartered in Dayton, Ohio, and maintains a place of business within this district.

CLAIM

6. Stenger joined the Ohio Army National Guard in 1979. In 1992, he transferred to the Indiana Army National Guard and, during his combined 28 years of service, rose to the rank of Lieutenant Colonel.

7. As a member of the Indiana National Guard, Stenger was obligated to serve two weeks of active military duty once per year.

8. In 1985, Stenger began his career as an electrician and a member of the International Brotherhood of Electrical Workers, Local 212 (the "Local").

9. Stenger was hired by Wagner in April 2006 to work as a journeyman electrician on a project at the Miami Fort Station coal power plant.

10. In August 2006, Wagner promoted Stenger from journeyman electrician to a position as foreman of a crew of eight electricians at the power plant. As a result of this promotion, Stenger's base salary increased, as did his duties, responsibilities and opportunities for overtime pay.

11. In October 2006, Stenger received orders from the Indiana National Guard to report to active duty for his annual training requirement from January 13-27, 2007.

12. Stenger gave his supervisor at Wagner, General Foreman Mike Fohl (“Fohl”), immediate notice of his upcoming military duty.

13. Before Stenger left for his two weeks of active duty, Fohl informed Stenger that he would resume his duties as foreman upon his return.

14. Stenger reported for active duty service on January 13, 2007 at Fort Leavenworth, Kansas, during which he performed intense battle training scenarios.

15. While Stenger was on active duty from January 13-27, John Philpott (“Philpott”), a journeyman electrician on Stenger’s crew, covered for Stenger and performed Stenger’s foreman duties at the power plant.

16. Prior to his return to Wagner from active duty on January 28, 2007, Stenger contacted Wagner and informed the company of his availability for work.

17. Stenger returned to work at Wagner on January 28, 2007 and was informed by Fohl that morning that he would no longer be a foreman, and instead would be demoted to a journeyman electrician. Wagner retained Philpott as the foreman of what was previously Stenger’s crew of electricians. This demotion resulted in a reduction of Stenger’s pay, duties, responsibilities and opportunities for overtime work.

18. On April 20, 2007, Stenger was laid off by Wagner.

19. Upon information and belief, Philpott was still foreman of Stenger's former crew when Wagner laid off Stenger on April 20, 2007. Philpott continued to work as a foreman for Wagner on the Miami Fort Station power plant project through early 2008.

20. Wagner's refusal to reemploy Stenger in his former position as foreman after his two weeks of absence for military duty was unlawful and in violation of USERRA, 38 U.S.C. § 4312 and 4313.

21. Because of Wagner's conduct, Stenger has suffered significant monetary damages, and a loss of benefits, in an amount to be proven later at trial.

PRAYER FOR RELIEF

WHEREFORE, Stenger prays that the Court enter judgment against Wagner as follows:

22. Declare that Wagner's demotion of Stenger from foreman to journeyman electrician upon his return from military service was in violation of USERRA, 38 U.S.C. §§ 4312 and 4313;

23. Require that Wagner fully comply with the provisions of USERRA by paying Stenger all amounts due to him for his loss of wages and any lost benefits caused by Wagner's failure or refusal to comply with the provisions of this law;

24. Enjoin Wagner from taking any action against Stenger that fails to comply with the provisions of USERRA;

25. Award Stenger prejudgment interest on the amount of lost wages and benefits found due; and

26. Grant such other and further relief as may be just and proper.

Respectfully submitted,

LORETTA KING
Acting Assistant Attorney General
Civil Rights Division

BY: /s/ John Gadzichowski
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CERTIFICATE OF SERVICE

I hereby certify that today I served the foregoing **Complaint** on the counsel of the defendant via U.S. first-class mail, postage prepaid, to the following address:

Jim Fortkamp
Wagner Industrial Electric, Inc.
3178 Encrete Lane
Dayton, OH 45439

Dated this 27th Day of February, 2009

/s/ Andrew Braniff
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